IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.1709 OF 2006

M/s.Roofit Industries Limited. .. Petitioner
v/s.
Union of India & ors. .. Respondents

Mr.Vikram Nankani with Mr.M.R.Baya for petitioner.

Mr.A.M.Sethna with Mr.M.I.Sethna for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 27th July 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioner seeks to challenge the order dated 14th March 2006 passed by the Customs, Excise & Service Tax Appellate Tribunal, whereby the Tribunal has declined to accept the explanation of the petitioner with respect to the absence of its Advocate before the Tribunal when the matter was fixed earlier and which led to the earlier order dated 10th November 2005.

3. The petitioner is a manufacturer of certain cement products which amongst others include mixing up various chemicals. The petitioner’s contention is that it is essentially a cement whereas the contention of the Revenue is

that it no longer remains cement and that it is essentially a chemical. The explanation of the petitioner was rejected by the original Authority and it imposed a duty demand of Rs.70,74,224/- and also an additional duty and penalty leading to a demand of Rs.98,43,012/-. This order was challenged in Appeal to the Tribunal. The petitioner was informed that the matter was to come up on that particular date. However, nobody remained present on behalf of the petitioner. In spite of that, considering that the question of classification was a arguable one, the Tribunal asked the petitioner to deposit the amount of Rs.25,00,000/- and granted eight weeks time by the order passed on 10th November 2005.

4. The petitioner applied for recall of this order by making an application to that effect. That application has come to be rejected by the impugned order. The petitioner has sought to submit that its representative was not present on that date since the person handling the matter had left the employment. No particulars whatsoever were given and, therefore, the Tribunal declined to accept the explanation. We do not find any fault in the Tribunal arriving at its decision. It is the responsibility of the parties to remain

present and if they do not remain present, the Tribunal cannot be prevented from passing appropriate order. Even so, the Tribunal has reduced the duty demanded and restricted to Rs.25,00,000/-.

5. One of the submissions of the petitioner has been that its Reference is pending before the BIFR. It is, however, material to note that the Apex Court in its judgment in **Metal Box India Ltd. vs. Commissioner of Central Excise reported in 2003 (155) E.L.T. 13 (S.C.)** has laid down that an order of pre-deposit under Section 35F of the Central Excise Act, 1944 cannot fall under any of the specified categories of exception under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

6. Mr.Nankani, learned Counsel appearing for the petitioner, however, points out that the judgment has to be read along with one earlier judgment in **Sangfroid Remedies Ltd. vs. Union of India reported in 1998 (103) E.L.T. 5 (S.C.)** where the Apex Court has held that pendency of such proceedings is one of the factors to be considered.

7. We have noted the submissions of the learned Counsel and even considering that it is a factor to be noted, in our view, the Tribunal has exercised its jurisdiction properly. It has noted the hardship that would cause to the petitioner and reduced the duty demand to Rs.25,00,000/- and has in fact granted further time to deposit the amount by four weeks from its order dated 14th March 2006. That time having expired, the consequences would follow.

8. In the aforesaid circumstances, in our view, there is no need to interfere with the impugned order. Petition is dismissed.

9. We record the statement of Mr.Nankani appearing for the petitioner that the amount of Rs.5,00,000/- has been deposited. He makes a request that a further period of eight weeks be granted so that the petitioner may deposit the remaining amount of Rs.20,00,000/-. We, therefore, add that in the event the petitioner deposits this amount of Rs.20,00,000/- by end of September 2006, the Appeal will stand restored.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)